

REQUEST FOR PROPOSALS FOR COMMERCIAL LEASE OF STATE SCHOOL TRUST LAND

**School Trust Land, Section 7, T32N, R23W, P.M.,M.
Olney, Montana**



**Montana Department of Natural Resources and Conservation
Stillwater State Forest
May 28, 2008**

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ATTACHMENTS

- A. Location and Site Maps
- B. RFP Evaluation Criteria
- C. Standard Lease Agreement

KEY DATES

Important dates including proposal deadlines are shown below. Formal addenda to this RFP will be issued to the Proposers notifying them of changes to these dates.

<u>Activity</u>	<u>Date</u>
Advertisement	June 8, 2008
Deadline for Questions	June 23, 2008
Distribution of RFP Amendments	June 26, 2008
Deadline to Submit Proposal	July 9, 2008
Date of Opening	July 10, 2008
Review and Scoring	July 23, 2008
Award (to be determined)	

REQUIRED CONTENTS FOR PROPOSALS

1. Transmittal Letter, Application fee
2. Summary of Proposal
3. Statement of Qualifications, Training, Experience, and Education
4. Financial Ability, Operating Income, Cash Flow Analysis
5. Site Plan, Construction, and Operation Plan
6. Compensation Paid to the State
7. Conflict of Interest Statement

REQUEST FOR LEASE PROPOSALS

CHAPTER 1 - BACKGROUND

1.1 Introduction

The Montana Department of Natural Resources and Conservation (DNRC) is the land-management agency for school trust lands in Montana. The purpose of this Request for Proposal (RFP) is to solicit proposals to lease approximately one (1) acre of school trust land in Olney, Montana. The proposed lease area is an unzoned area in Flathead County, which permits a broad range of possible uses.

On April 2, 2008, the United States Postal Service (USPS) sent out the “Solicitation for Proposals – Site or Existing Space – Solicitation Number E36229.” DNRC responded to the solicitation with the proposed above-mentioned land. On May 27, 2008, USPS notified DNRC that its proposal had been selected as the preferred site for consideration. DNRC anticipates that this RFP will identify and grant an option to lease the approximate 1 acre in order to facilitate the construction of a Federal post office building. However, the State will solicit an RFP for the site as part of the standard procedure to ensure that DNRC considers all options for that site.

1.2 Tract Legal Description

The property is located within the SW¹/₄SE¹/₄NE¹/₄ of Section 7, Township 32 north, Range 23 west, P.M.,M., Flathead County, Montana.

1.3 Location and Physical Description of Property

The property proposed for option is approximately one (1) acre in size and is located near the Olney, Montana townsite and adjacent to U.S. Highway 93 and Olney Loop Road.

1.4 Inspection

An on-site inspection of the property is recommended. An on-site visit may be arranged by contacting the Project Manager.

1.5 Adjacent Lands

The subject property open to lease is located east of the Olney townsite, surrounded by State lands and private properties. The adjacent lands are primarily used for residential purposes and forest management.

1.6 Zoning, Subdivision Review, and Building Permits

The proposed area is unzoned. The Lessee(s) selected for the site must obtain all required developmental permits from the Flathead County. The parcel is part of a larger tract and the proponent should anticipate that subdividing this parcel would be part of the process.

CHAPTER 2 - LIMITATIONS

2.1 Lease Proposal Limitations

All Lease Proposals must comply with the following limitations and requirements:

- Use of the property must not reduce the value of the tract.
- Storage or disposal of any toxic, hazardous, or deleterious substances must comply with applicable local, state, and federal laws and regulations.
- Use of the property must comply with state, federal and local laws.

The Lessee will be solely responsible for all costs to be incurred in the design, development, construction, operation, and maintenance of all improvements upon the tract. The State will not be held liable for any costs incurred by the Lessee or any Proposer in the preparation of any proposal, negotiation for lease, or procurement of financing for any portion of the Lease Proposal or lease.

The Lessee will be solely responsible for all design, installation, and costs for connecting to and using any and all utilities (water, sewer, electricity, phone, natural gas, etc.) to serve the proposed improvements.

The Lessee will be responsible for the payment of all taxes, assessments, levies, fees, or other governmental charges assessed upon any property owned by the Lessee.

The Lessee will be responsible for any special improvement district assessments associated with the property.

The Lessee will be responsible for obtaining all necessary licenses or permits required by any governmental authority prior to and throughout the operation of the project.

Any proposal not meeting these limitations or other criteria set out in this offering will be rejected at the discretion of DNRC.

DNRC reserves the right to waive technical defects in this RFP.

Upon expiration or cancellation of the lease, the DNRC reserves the right to require the Lessee to remove and/or reclaim all authorized improvements constructed on the parcel during the term of this lease, at the expense of the Lessee.

DNRC reserves the right to request additional information and data from the Proposer to ascertain Proposer's capabilities and desire to develop the property.

DNRC further reserves the right to reject, at any time before a lease is executed, any application, proposal, or bid determined by DNRC to be contrary to the best interests of the State.

CHAPTER 3 - DETAILS AND INSTRUCTIONS

3.1 Submission of Lease Proposals

To be eligible for consideration, Proposers must submit or deliver a sealed copy of their Lease Proposal, as detailed below in the application requirements, to the Project Manager. DNRC will maintain an official record of Proposers' names and addresses.

3.2 Deadline for Receipt of Lease Proposal

The copy of the Lease Proposal should be mailed in a sealed envelope. A label must be attached to the outside top left corner beneath the bidder's return address, stating that the contents are a response to the RFP for *NAME OF PROPOSAL* and should not be opened until **July 10, 2008**. **Proposals must be mailed or delivered so that they are physically received by DNRC by 5:00 p.m., the close of business, on July 9, 2008 to be eligible for consideration.** Failure to meet the deadline will result in disqualification of the proposal without review.

DNRC assumes no liability for incorrect addresses or failed delivery of Lease Proposal packages by public or private carriers. For expedited delivery, Proposers should make arrangements with the project manager.

3.3 Costs of Preparing Lease Proposal

It is the responsibility of the successful Proposer to obtain private financing for all costs associated with the design, construction and operation of your proposal. The Proposer assumes the risk of loss in the submission of any proposal or its operation. DNRC is not liable for any costs or consequential damages incurred by Proposers in proposal preparation, negotiations, or any other costs that may result from activities in connection with this Lease Proposal.

3.4 Modification or Clarification the Lease Proposal

All recipients of this RFP should review its contents for defects and questionable matter. A recipient may make a **written** request for clarification of the RFP. Requests should be submitted in an envelope marked "**Questions Related to the RFP**" and to the attention of the project manager no later than **June 23, 2008** to ensure sufficient time for adjustments. At its option, DNRC will issue addenda to modify or clarify the RFP by **June 26, 2008**. DNRC will distribute all addenda in writing to all persons of record under Section 3.1 of this RFP. Protests based on omissions, error, or the contents of the RFP will be disallowed if the procedures outlined in this paragraph are not followed. No interpretation made to any Proposer as to the meaning of the RFP shall be binding on DNRC unless repeated in writing and distributed as an attachment by DNRC.

3.5 Application Requirements

All Lease Proposals must include a narrative of the proposal containing all of the information requested in the Lease Proposal Format (Chapter 4) section of this RFP.

3.6 Confidentiality of Proposals

All proposals and material submitted become the property of DNRC, but may be returned to the Proposer at the discretion of DNRC. Materials identified as trade secret information in the proposals shall remain confidential upon request from the Proposer. Such request for confidentiality must be in writing and specify the trade secret information to be withheld and the reason for the request. Trade secret requests will be reviewed for applicability and approval by DNRC's legal counsel. All information deemed not to be trade secrets and other information contained in proposals become public information at bid opening.

3.7 Lease Format and Term

A copy of the standard DNRC Lease Agreement is included in Attachment C, which will be strictly adhered to. Pursuant to Section 77-6-109, MCA, and Section 77-6-205, MCA, **DNRC may issue a lease to the successful Proposer for a term of up to 99 years.** The final lease agreement will be drafted to reflect the Proposer's Bid Proposal. However, the lease will contain the entire agreement between the parties, and the lease proposal shall not be deemed to be a part of the agreement between the parties unless so designated in the lease. The proponent will have a reasonable period of time to review, negotiate, and accept the final lease agreement.

3.8 Insurance and Indemnification

The selected Lessee will be required to obtain general liability insurance that lists the Lessee and the State as co-insured for all of the Lessee's activities on the tract. DNRC reserves the right to stipulate coverage based on the nature of the Lease Proposal. The Lessee will be required to indemnify the State of Montana for all damages the Lessee incurs due to any actions of the Lessee.

The successful Lessee will be required to obtain property insurance in an amount sufficient to repair or replace improvements to the parcel. Such certificates of insurance will be held by a Trustee of Insurance to guarantee that the proceeds of such policies are allocated for their intended purposes.

3.9 Special Lease Conditions

DNRC reserves the right to impose special lease conditions and modify the standard terms recited in the lease agreement as deemed necessary to implement the selected proposal and protect the interests of trust beneficiaries.

3.10 Joint Ventures

Joint ventures are acceptable for response to this RFP.

3.11 Right of Rejection

DNRC may reject any or all proposals for a lease at any time before the lease is executed, when it is in the best interest of the State and trust beneficiaries to do so.

3.12 Evaluation Committee

All proposals received will be reviewed and evaluated by a committee appointed by DNRC. The public may view the committee's deliberations and evaluation of proposals, but may not participate directly in such deliberations.

3.13 Responsiveness

Failure to follow the format outlined in Chapter 4 may result in a lower score and could result in disqualification of the proposal.

3.14 Additional Information

PROPOSER ORAL PRESENTATION: Proposers selected for final evaluation may be required to make an oral presentation of their proposal. Such presentations provide an opportunity for the Proposer to clarify their proposal to ensure mutual understanding. If such presentations are necessary, they will be held at DNRC's Stillwater State Forest in Olney, at times and dates to be announced. If more information is needed, contact the Project Manager.

CHAPTER 4 - LEASE PROPOSAL FORMAT

Any request for information by DNRC to the Proposer is solely for the purpose of selecting a proposal and understanding its terms. Such a request shall not be considered to constitute a binding agreement or commitment by DNRC in any manner. Criteria for ranking and selecting a proposal are presented in this Section and Attachment B.

4.1 Transmittal Letter, Application Fee, Bid Bond

Each application shall include a letter of transmittal that:

1. Lists the complete name and address of the Proposer(s).
2. Lists the name, address, business telephone number, and electronic mail address of an authorized representative who can be contacted by DNRC concerning the proposal.
3. Includes the notarized signature of the individual authorized to bind the Proposer. If the Proposer is a corporation, the application must include a copy of the corporate resolution authorizing the officer or agent to bind the corporation. Applications signed by an attorney-in-fact must include a copy of their power of attorney to bind the principal. If the Proposer is a governmental agency, the signature must be that of a person (or persons) legally authorized to execute documents on behalf of the governing body. Proof of authority to bind the governing body shall be included.
4. Includes a nonrefundable \$50.00 lease application fee.

This transmittal letter will be considered the Proposer's application for lease through Proposer's Lease Proposal.

DNRC requires a bid bond of 10 percent of the estimated annual lease. If the successful Proposer fails to enter into a lease with DNRC, the Proposer will forfeit the bid bond to DNRC.

4.2 Summary of Proposal

The Proposer should provide the following information as a summary of the proposal:

1. A description of the proposed use, including lot size and configuration desired;
2. The demand within the community for the proposed project;
3. The benefit to the community from the proposed project;
4. The compatibility of proposed project with surrounding uses; and
5. the lease term desired (20 to 99 years).

4.3 Statement of Qualifications, Training, Experience, and Education

Each Proposer shall list and describe the general partner, manager, or principal employees who will directly oversee the operation and maintenance of the proposed project. The application shall include a statement of qualifications for each such individual involved in the operation and maintenance of the proposed project. Each statement of qualifications must discuss the person's training, experience, and/or education that relates to the proposed project. When the Proposer proposes that separate legal entities will possess combined management, fiscal, or legal responsibilities, the application shall describe the legal relationship between the entities. Provide names and addresses of references.

Where the Proposer has prior experience in a project similar to that proposed in its proposal, the Proposer should describe the prior project, its present status, and the profitability of the prior project. The Proposer may list the names, addresses, and telephone numbers of references that have knowledge of the prior project and the Proposer's involvement in the prior project.

4.4 Financial Ability, Operating Income, Cash Flow Analysis

The proposal shall include the Proposer's credit report, current accounting balance sheet; and an income statement that accurately and fully discloses the Proposer's current assets, long- and short-term indebtedness, equity, commitments for financing, cash flow, and other relevant facts by which DNRC may fully evaluate the Proposer's financial ability to construct, operate, and maintain its proposed project. Past bankruptcy or loan defaults must also be disclosed. The Proposer may include letters of reference or commitments for financing that it has received from financial institutions. DNRC reserves the right to perform credit checks of all Proposers or request further information.

Include a summary of projected income, costs, and earnings for the first 5 years of the operation of the proposed project, along with a discussion of the economic assumptions upon which the projections are based. **Any information the Proposer wishes not be disclosed must be clearly identified as confidential.**

4.5 Site Plan, Construction, and Operation

All proposed buildings, infrastructure, landscaping and other improvements to the property must conform to all land use regulations of Flathead County. Proposals must be planned with adequate access, drainage, and stormwater run-off retention/detention so as to meet any jurisdictional authority's requirements. The successful Proposer will be asked to provide proof of acceptance of plans as to this requirement prior to beginning any construction.

The Proposer should include conceptual plans of the following:

- A. The portion of the site desired for lease.
- B. The activities to be conducted, with a site plan to include the following:
 - Proposed uses, location, and scale
 - Typical rendering or elevation of buildings including building materials & color
 - Location of roads and sidewalks
 - Landscape and lighting plan
 - Phasing plan, if any
 - Open space and landscaping features
- C. The number, type, location, and estimated cost of proposed improvements to the site.
- D. The anticipated schedule and plan for construction of the improvements on the state tract.

Proposer should be aware that additional development standards may be required over and above local standards, for example lighting standards, signage standards, landscaping standards, building architecture, parking, and others, depending on design and site planning. DNRC retains site plan review and approval authority.

4.6 Compensation Paid to State (Lease Rental)

The Proposer should detail the planned compensation to DNRC for lease of the site (or portion thereof), including the payment period (annual or semi-annual payments), escalation, and other types of payments. Escalation will be determined using the previous year's rental payment as a base.

The advertised minimum lease rate for the site is \$3,150.00 per year for the entire +/-1.0-acre parcel. The Proposer may apply to lease all or a portion of the tract. If a portion of the parcel is unusable for the anticipated project, this should be allowed for in the proposed lease rental.

4.7 Development Costs

The Lessee will be responsible for all costs associated with the development of the property, which may include subdivision, permits, etc.

4.8 Realtor Participation

No realtor fees will be paid by DNRC as part of the proposal.

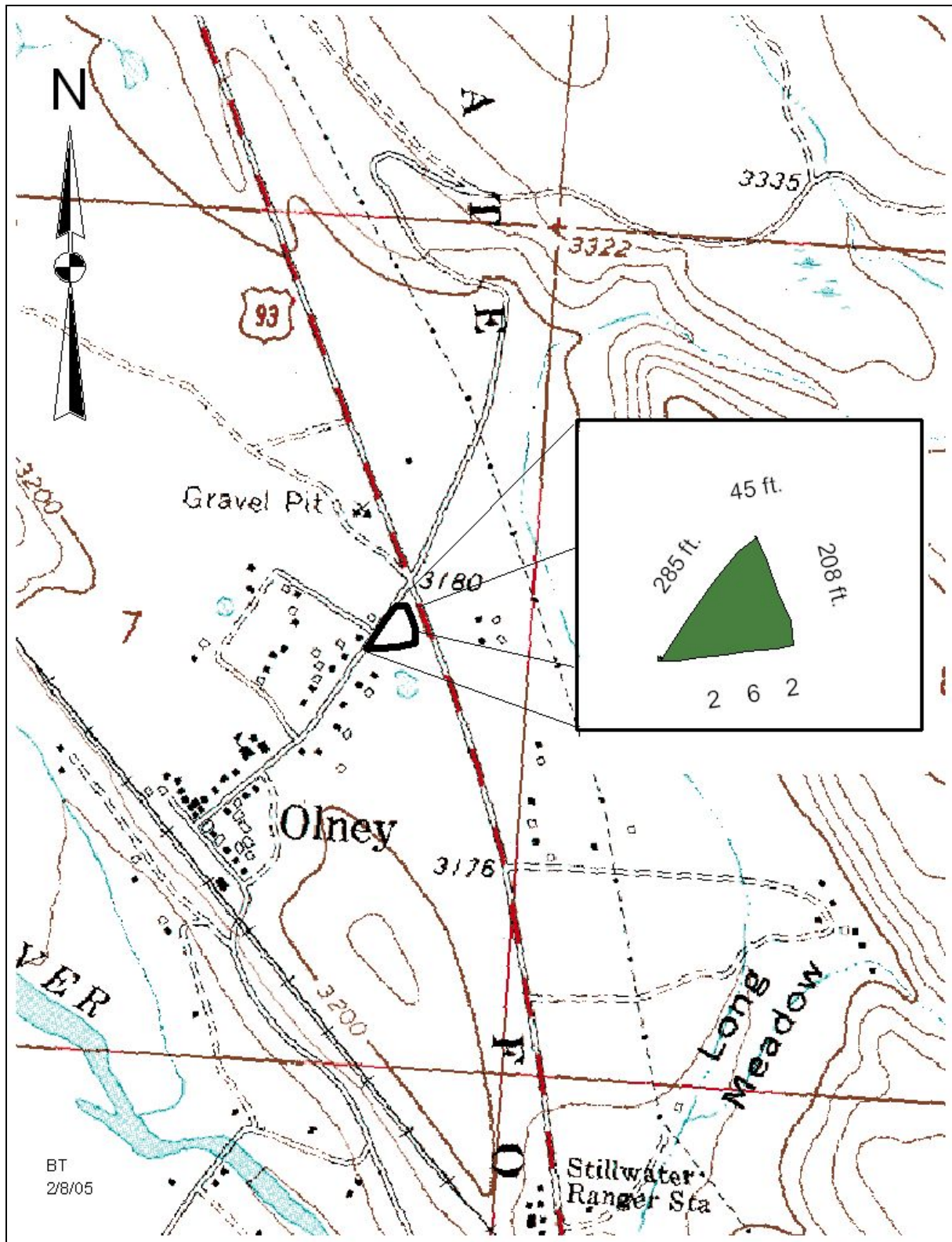
4.9 Conflict of Interest

Pursuant to Section 77-1-113, MCA, it is unlawful for members of the State Board of Land Commissioners and officers and employees of the Montana Department of Natural Resources and Conservation to purchase or lease, directly or indirectly, any lands of the State. Proposers shall disclose whether such a member, officer, or employee:

1. has assisted the Proposer as counsel, consultant, representative, or agent at any time; or
2. has a financial interest in the Lease Proposal; or,
3. has solicited or accepted employment with the Proposer; or,
4. has engaged in any financial transaction for private purposes with the Proposer.

Failure to disclose any of the above-described facts where they have occurred shall result in cancellation of the special lease if awarded to the Proposer.

ATTACHMENT A



ATTACHMENT B

Evaluation Criteria

OLNEY TRACT

EVALUATION SUMMARY

Proposal submitted by: _____

		<u>Max. Points</u>	<u>Awarded Points</u>
4.1	Transmittal Letter	Complete (Y/N)	_____
4.2	Summary of Proposal	400	_____
4.3	Qualifications	200	_____
4.4	Financial Ability	500	_____
4.5	Site Plan, Construction, & Operation	200	_____
4.6	Compensation Paid to State	<u>700</u>	_____
4.7	Conflict of Interest	Y/N	_____
Total		2,000	_____

Conclusion:

_____ Proposal is acceptable for Lease Agreement

Comments:

_____ Proposal is unacceptable for Lease Agreement

Comments:

Evaluated by: (print) _____

Signed: _____ Date: _____

Evaluator Initials_____

NAME OF PROPOSAL

SPECIAL LEASE PROPOSAL EVALUATION CRITERIA

PROPOSAL SUBMITTED BY: _____

4.1	<u>Transmittal Letter</u>	<u>Complete</u>	<u>Incomplete</u>
	Name and address of applicant	_____	_____
	Notarized Signature	_____	_____
	Application Fee	_____	_____
4.2	<u>Summary of Proposal</u>	<u>Max. Points</u>	<u>Awarded Points</u>
	Community Need & Benefit	140	_____
	Compatibility with Surrounding Uses	140	_____
	Lease Term (3 point/year)	<u>120</u>	_____
	Subtotal	400	<u>()</u>
4.3	<u>Qualifications, Experience</u>	<u>Max. Points</u>	<u>Awarded Points</u>
	Statement of Qualifications	100	_____
	Prior Experience	<u>100</u>	_____
	Subtotal	200	<u>()</u>

Evaluator Initials_____

4.4	<u>Financial Ability, Cash Flow</u>	<u>Max. Points</u>	<u>Awarded Points</u>
	Financial Statement/References	100	_____
	Creditor Financial Commitment	100	_____
	Analysis of Property Operating Data	150	_____
	Cash Flow Analysis	<u>150</u>	_____
	Subtotal	500	(_____)
4.5	<u>Site Plan, Constr., & Operation</u>	<u>Max. Points</u>	<u>Awarded Points</u>
	Site Plan	50	_____
	Proposed Construction & Operation Schedule	50	_____
	Value/Quality of Improvements	<u>100</u>	_____
	Subtotal	200	(_____)
4.6	<u>Compensation Paid to State</u>	<u>Max. Points</u>	<u>Awarded Points</u>
	NPV of Total Base Compensation (Highest bid = 500 points, others = % of high bid x 500)	500	_____
	Payment Period		
	- Monthly = 0		
	- Annual = 100	100	_____
	-		
	Other Compensation	<u>100</u>	_____
	Subtotal	700	(_____)

PROJECT NAME
COMMERCIAL LEASE
CITY, MONTANA

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PROJECT NAME COMMERCIAL LEASE

CITY, MONTANA

THIS COMMERCIAL LEASE (this "Lease") is entered into as of April 1, 2006, by and between the **Montana State Board of Land Commissioners**, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as "Lessor"), and **COMPANY**, whose address is ADDRESS (hereinafter referred to as the "Lessee").

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. In this Lease, the following defined terms have the meanings set forth for them below or in the section of this Lease indicated below:

"Affiliates" means, with respect to any party, any entities or individuals that control, are controlled by, or are under common control with such party, together with its and their respective partners, members, venturers, directors, officers, shareholders, trustees, trustors, beneficiaries, agents, employees and spouses.

"Approvals" is defined in Section 2.7.

"Assignment Documentation" is defined in Section 11.1.

"Base Rent" means that rental defined in Section 3.1.

"Building" means any enclosed building constructed or installed upon the Land.

"Commencement Date" means **DATE**, which is the date that this Lease has been duly executed by Lessor and Lessee.

"Contingency Period" is defined in Section 2.7.

"Default by Lessee" has the meaning set forth in Section 15.

"Default by Lessor" has the meaning set forth in Section 16.

"Deliveries" is defined in Section 2.5.

"Entitlements Contingency" is defined in Section 2.7.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law (hereafter, "Claims") or any permit issued under any such Environmental Law, including, without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from

Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Laws” means any existing and future Laws relating to, or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, Releases or threatened Releases of Hazardous Substances, including, without limitation, The Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, et seq., MCA; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq.

“Expiration Date” means the date the Lease Term ends.

“Foreclosure Transferee” means any foreclosure purchaser or other transferee of Lessee’s interest under this Lease who acquires such interest at the sale conducted by virtue of, or otherwise in connection with, a foreclosure of any Leasehold Mortgage or any conveyance in lieu of such foreclosure.

“Hazardous Substances” means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in CECRA, Section 75-10-701, et seq., MCA, or under any Environmental Law.

“Improvements” mean any Buildings, structures, pavement, landscaping, lighting fixtures or other improvements now or later installed or constructed upon the Land.

“Indemnified Matters” is defined in Section 5.3.

“Index” shall mean the Consumer Price Index for All Urban Consumers (CPI-U) - U.S. City Average - All Items, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84=100), or if publication of the Index is discontinued, a substitute index selected by Lessor and Lessee of comparable statistics computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

“Land” means the real property consisting of approximately 8.82 acres located within Section 36 in Township 2 North, Range 2 East, MPM, near Three Forks, Gallatin County, Montana, that is more particularly described on Exhibit A, together with all reversions, remainders, easements, rights-of-way, appurtenances, agreements, licenses, tenements and hereditaments appertaining to or otherwise benefiting or used in connection with said real property, together with all of Lessor’s right, title and interest in and to any streets and alleys abutting or adjoining such real property, and together with any and all sanitary or storm sewer

capacity, and without limitation, all development rights and approvals, subject to those matters set forth in **Exhibit A**.

“**Laws**” means, subject to Section 5.2, any and all present or future federal, state or local laws (including common law), statutes, ordinances, rules, regulations, orders, decrees or requirements of any and all governmental or quasi-governmental authorities having jurisdiction over the Land described in this Lease.

“**Lease Reclamation and Marketing Fee**” means **\$XX,000.00** and is further defined in section 17.1.

“**Lease Year**” means: The first “Lease Year” means up to a one-year period starting on the Commencement Date and ending on the first occurrence of the last day of February. Each successive “Lease Year” is the one-year period during the Term from March 1 to the last day of February.

“**Leasehold Mortgage**” means any mortgage, deed of trust, assignment of rents, assignment of leases, security agreement or other hypothecating instrument encumbering Lessee’s interest under this Lease or the leasehold estate in the Premises hereby created, Lessee’s rents and other sums due from any Sublessees, Lessee’s rights under Subleases and any other agreements executed in connection with Lessee’s operation of the Premises, or Lessee’s interest in any fixtures, machinery, equipment, Land, Buildings, Improvements or other property constituting a part of the Premises.

“**Leasehold Mortgagee**” means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Leasehold Mortgage.

“**Lessee’s Address**” means:

Name and Address here

“**Lessor’s Address**” means:

Montana Department of Natural
Resources and Conservation
Attn: Real Estate Management Bureau
1625 Eleventh Avenue
PO BOX 201601
Helena, MT 59620-1601

With copies to:

DNRC – Unit Office
address
city, MT 59

DNRC – Area Office

address.
city, MT 59

“Major Amendment” is defined in Section 4.1.

“Premises” means the Land and all Improvements.

“Project” means a landfill scale to be constructed on the Premises.

“Proof” is defined in Section 8.7.

“Property” is defined as real property owned by the Lessor and described under the “Land” definition.

“Qualified Mortgagee” means any Leasehold Mortgagee who notifies Lessor in writing of its name, its address for notices and the fact that it is a Leasehold Mortgagee and includes with such notice a copy of any Leasehold Mortgage by virtue of which it became a Leasehold Mortgagee. Notwithstanding the foregoing or any other provision of this Lease to the contrary, Lessor will have no obligation to recognize more than three Leasehold Mortgagees as Qualified Mortgagees at any given time. If more than three Leasehold Mortgagees exist, then Lessee will notify Lessor in writing of the three Leasehold Mortgagees that Lessor should recognize. If Lessee fails to notify Lessor of the three Leasehold Mortgagees that Lessor should recognize, then Lessor will recognize the three first in time Leasehold Mortgagees that have notified Lessor.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing or the like, into or upon any land, surface water, groundwater or air, or otherwise entering into the environment.

“Renewal Terms” is defined in Section 2.2.

“Rent” means Initial Rent, Reduced Rent, Base Rent and all other amounts required to be paid by Lessee under this Lease.

“Required Changes” is defined in Section 4.6.

“Sublease” means a sublease, license, concession or other agreement (whether written or oral) according to which Lessee grants any party the right to possess all or any portion of the Premises.

“Sublessee” mean any party to whom Lessee grants the right to possess all or any portion of the Premises according to a Sublease.

“Substantial Damage” means harm to Lease improvements that renders the facility inoperable for its intended use for more than 180 days.

“Substantial Taking” means a Taking of at least 15% of the Land or more or which, in Lessee’s and Lessor’s reasonable judgment, will materially and adversely interfere

with any development or use of the Premises that Lessee is then conducting or intends in good faith to conduct in the future.

“Taking” means the taking of all or any portion of the Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale or conveyance of all or part of the Premises under the threat of condemnation.

“Taking Date” means, with respect to any Taking, the date on which physical possession of the portion of the Premises that is the subject of such Taking is transferred to the condemning authority.

“Taxes” means all general ad valorem real and personal property taxes and assessments levied upon or with respect to the Premises or the personal property used in operating the Premises, and all taxes, levies and charges which may be assessed, levied or imposed in addition to, or in replacement of, all or any part of ad valorem real or personal property taxes or assessments as revenue sources, and which in whole or in part are measured or calculated by or based upon the Premises, the leasehold estate of Lessor, Lessee or the Sublessees, or the rents and other charges payable by Lessee or the Sublessees. Taxes will not include any net income taxes of Lessor. Taxes shall also include any so-called “beneficial” use taxes imposed by Laws.

“Tax Year” means a 12-month period for which Taxes are assessed by the applicable taxing authority.

“Term” means the duration of this Lease, beginning on the Commencement Date and ending on the Expiration Date, unless terminated earlier or extended further as provided in this Lease.

“Title Company” means a national title company having offices in the state of Montana.

1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Lease. In the event of any inconsistency between such Exhibits and the terms and provisions of this Lease, the terms and provisions of the Exhibits will control. The Exhibits to this Lease are:

- A. Legal description of the land
- B. Rental schedule
- C. Utility and road infrastructure
- D. Ground lessor nondisturbance and attornment agreement

2. LEASE TERM.

2.1 Lease. Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Premises for the Term of YEARS (XX) years.

2.2 Lessee's Renewal Option. Subject to the terms and provisions of this Section 2.2, Lessee, at its option, may extend the Term of this Lease for additional 10-year terms, collectively, the "Renewal Terms") provided, however, that in no event shall the Term be extended by the last of such Renewal Terms to a date that is XX years after the Commencement Date. To exercise each such option, Lessee must deliver notice of the exercise thereof to Lessor no later than 120 days prior to the expiration of (a) the initial Term as described in section 2.1, in the case of Lessee's option with respect to the first Renewal Term, or (b) the Term as extended by the previously exercised Renewal Term. Should Lessee fail to give said timely notice, and Lessor gives notice to Lessee that the lease is therefore terminated, Lessee shall have thirty days to cure notice provision and to exercise extension option.

2.3 Lessor and Lessee Covenants. Lessor covenants to observe and perform all of the terms, covenants and conditions applicable to Lessor in this Lease. Lessee covenants to pay the Rent when due, and to observe and perform all of the terms, covenants and conditions applicable to Lessee in this Lease.

2.4 Quiet Enjoyment. Lessor covenants that during the Term Lessee will have quiet and peaceful possession of the Premises, subject only to the terms and conditions of this Lease.

2.5 Lessor's Deliveries. Except as otherwise provided below, Lessor will, within 10 days after the Commencement Date, at Lessor's expense, use best efforts to deliver, or cause to be delivered to Lessee, the following (collectively, the "Deliveries"):

(a) Any title reports or policies together with any copies of documents referenced therein and any surveys of the Land currently in Lessee's possession or control, copies of any annual real estate tax bills, copies of all plats, plans, specifications, architectural drawings, engineer's drawings and any street improvement specifications currently in Lessee's possession or control.

(b) Copies of all environmental studies, reports and information in Lessor's possession or control, including, without limitation, correspondence from any governmental or quasi-governmental authorities having jurisdiction over the Land, concerning the environmental condition of the Land.

(c) True, accurate and complete copies of all other documents in any way related to the development, usage, operation or marketability of the Land which are in the possession or control of Lessor. Such documents shall include, without limitation, surveys, all environmental, soils and engineering tests, appraisals, reports and other studies ordered or performed at the direction of Lessor.

2.6 Condition of Premises. Except as expressly set forth in this Lease, Lessee accepts possession of the Premises on the Commencement Date in their then-current condition on an “AS IS, WHERE IS AND WITH ALL FAULTS” basis.

3. RENT.

3.1 Base Rent. Commencing on the Commencement Date, then throughout the Term, Lessee agrees to pay Lessor, without deduction or offset of any kind or prior notice or demand, according to the following provisions. Base Rent during each Lease Year will be payable annually in an amount equal to the annual amount specified for such Lease Year, in advance, on or before the first day of March. However, if the Base Rent Commencement Date is not the first day of a month or the Term ends on other than the last day of a month, Base Rent for such month will be appropriately prorated based on the number of days in such month and the applicable payment will correspondingly be appropriately prorated. All rent will be calculated according to the Rental Schedule, Exhibit B.

3.2 Terms of Payment. All Rent will be paid to Lessor in lawful money of the United States of America, at Lessor’s Address, without notice or demand and without right of deduction, abatement or setoff, or to such other person or at such other place as Lessor may from time to time designate by written notice to Lessee. Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, **if any installment of Rent shall not be received by Lessor within 10 days after such amount is due, then, without further notice, Lessee shall pay to Lessor a late charge equal to 10% of the overdue amount.** The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Lessor will incur by reason of the late payment by Lessee.

3.3 Net Lease; Additional Rent. It is the intent of the parties that the Base Rent provided in this Lease will be a net payment to Lessor and that, except as expressly provided in this Lease, Lessor will not be required to pay any costs or expenses or provide any services in connection with the Premises and Lessee will bear all costs and expenses relating to the Premises, unless the same arise from Lessor’s gross negligence, willful misconduct or breach of this Lease or other legal duty. Accordingly, Lessee covenants and agrees to pay, in addition to Base Rent, as additional Rent, but subject to the foregoing and the other provisions of this Lease, all costs and expenses relating to the Premises which accrue during or are allocable to the Term, including, without limitation: (a) the entire cost of designing, constructing or altering the Improvements; (b) insurance costs; (c) taxes; (d) utility charges; and (e) maintenance and repair expenses and responsibilities, as provided in this Lease.

4. IMPROVEMENTS AND ALTERATIONS.

4.1 Lessor’s Approvals Under Lease. Lessor has the right to review or approve matters relating to the development, operation, maintenance, repair, replacement or modification of the Premises by Lessee or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises, or any Major Amendment thereto. For purposes of this Section 4.1, “Major Amendment” means an amendment that requires (by applicable Laws in effect as of the Commencement Date) an

official vote by the County Commissioners of Gallatin County, Montana (the “Commissioners”) or, if the Commissioners delegate or are required to delegate by Laws its authority to a commission or other governmental or quasi-governmental authority, an amendment that would have required an official vote by the Commissioners as of the Commencement Date. Any approval of Lessor hereunder will not be unreasonably withheld, conditioned or delayed.

4.2 Improvements and Alterations. Subject to the terms and conditions of Section 4.1, Lessee, may at any time and from time to time during the Term, with the consent or approval from Lessor (except as provided in Section 4.1), cause or permit any Buildings, structures, utilities, roadways or other Improvements to be installed or constructed on, over, under or across the Land or any part thereof and may cause or permit any Improvements now or later installed or constructed on the Land to be changed, altered, added to or removed or demolished in whole or in part. Lessee will provide Lessor notice of the commencement of any of the work set forth in the preceding sentence at least 10 business days before the commencement of the same. Lessee will pay all costs and expenses arising out of the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements by Lessee and will cause all Improvements to be installed, constructed, changed, altered, added to, removed or demolished in accordance with applicable Laws. Lessor will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against any liens resulting from such work. Upon completion of the initial Improvements for the Premises or thereafter at the same time as the COUNTY NAME County may require the same, Lessee shall deliver to Lessor an engineer’s certificate for the Premises and an “as-built” survey of the Premises as soon as reasonably practicable.

4.3 Governmental Approvals and Permits. Subject to the terms and conditions of Section 4.1, Lessee will have the right to apply for and secure, in Lessor’s name if necessary, such governmental approvals, permits or other authorizations (including, without limitation, rezonings, master or final site plans, subdivision or P.U.D. plats and agreements, building permits, grading permits, sign permits and certificates of occupancy) as may be necessary or appropriate in connection with the development of the Premises or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises. Lessor will fully cooperate with Lessee’s efforts to obtain such approvals, permits and other authorizations, including, without limitation, the execution by Lessor of any and all required submissions or applications within 10 days after Lessee submits the same to Lessor. Without limitation on Lessor’s obligations set forth above, Lessor may agree to execute a revocable power of attorney appointing Lessee as its true and lawful attorney-in-fact to execute and deliver any such instruments and documents in Lessor’s name or Lessee’s name or otherwise, consistent with the terms, conditions, and restrictions set out in this Lease. The Lessor, in its sole discretion, shall decide whether such a Power of Attorney shall be issued and shall decide its term. In any event, any such Power of Attorney shall terminate upon the expiration or termination of the Term of this Lease.

4.4 Signage. Subject to the terms and conditions of Section 4.1, Lessee may establish and from time to time modify a set of standard sign criteria for the purpose of regulating signage on the Premises, provided that all such signage complies with all applicable Laws.

4.5 Title to Improvements. During the Term, Lessee or its designated Sublessees will be deemed to own, and will hold title to, all Improvements and will be entitled to all depreciation deductions, investment tax credits, deductions for taxes and any other tax advantages resulting from the ownership of the Improvements, subject to the Lessor's reversionary interest upon the expiration or termination of the Lease. On the expiration or earlier termination of the Term: (a) title to all Improvements then held by Lessee, except moveable personal property not constituting fixtures, will automatically vest in Lessor without representation or warranty per Montana Code Annotated 77-1-906 (2); and (b) title to all Improvements then held by any Sublessee will remain in such Sublessee until the expiration or earlier termination of the term of such Sublessee's Sublease, at which time title to such Improvements will automatically vest in Lessor without representation or warranty.

4.6 Utility and Road Infrastructure. Lessee will install water and sewer, electric and telephone lines, natural gas lines, and roads, depicted on and in accordance with **Exhibit C** attached hereto. Accordingly, notwithstanding anything contained in this Lease to the contrary, Lessee hereby agrees that Lessor shall have the right to connect into the Utility Lines and roads without any requirement to reimburse Lessee for Lessee's original construction costs and expenses of the Utility Lines and roads; provided, however, that in the event that it is necessary to increase the size and capacity of the Utility Lines or change the location, manhole frequency, depth or construction method of the same (whether at the time of Lessee's original construction or at a later date) (collectively, the "Required Changes") to accommodate Lessor's extension of the Utility Lines to the Adjacent Property, Lessor shall be responsible for all costs and expenses associated with the Required Changes. Lessor agrees to use best efforts to minimize any interference or damage to the Premises during Lessor's extension of the Utility Lines to the Adjacent Property. Lessor also agrees to immediately pay for any and all damages to the Premises caused by Lessor's extension of the Utility Lines to the Adjacent Property. Last, Lessee agrees, at Lessor's cost, to reasonably cooperate with Lessor in creating the necessary easements for Lessor's extension of the Utility Lines to the Adjacent Property.

5. USE AND OCCUPANCY.

5.1 Use. Subject to the requirements of Section 4.1, Lessee may make use of the Premises for any and all lawful uses and purposes that are consistent with applicable Laws. Lessee shall maintain the Premises in a clean, orderly and neat fashion, ordinary wear and tear and damage by casualty and condemnation excepted. Lessee shall keep the Premises in good repair and shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty and condemnation excepted.

5.2 Compliance. Lessee will comply with all Laws applicable to Lessee's use and occupancy of the Premises and will keep and maintain the Premises in compliance with all applicable Laws. Lessee covenants and agrees that Lessee will not modify any document encumbering the Land that will (a) cause Lessee to be in violation of the terms of this Lease, and/or (b) materially increase the financial obligations of Lessor that exist in the documents encumbering the Land as of the date of execution of this Lease. Lessee will have the right, however, to contest or challenge by appropriate proceedings the enforceability of any Law (and the ECCR) or its applicability to the Premises or Lessee's use or occupancy thereof provided that Lessee complies with such Law during the pendency of Lessee's contest or challenge of it, so

long as Lessee diligently prosecutes the contest or challenge to completion and, in the event Lessee loses the contest or challenge, thereafter continues to abide by and conform to such Law. Lessor and Lessee shall reasonably cooperate with one another and shall in no event attempt to hinder the other's efforts or take a position adverse to one another and their rights under this Lease. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its Affiliates from and against any and all liabilities, obligations, losses, damages (including foreseeable and unforeseeable damages, but excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting from Lessor joining in any contest pursuant to this Section 5.2. Notwithstanding anything contained in this Lease to the contrary, Lessor and Lessee specifically acknowledge and agree that this Lease is subject to the further provisions of Title 77 of the Montana Code Annotated. The Lessee agrees to comply with all applicable laws, rules, and regulations in effect upon the Commencement Date of this Lease and those laws, rules, and regulations which may be enacted or adopted thereafter from time to time and which do not impair or impede the obligations of this Lease and which do not deprive the Lessee of an existing property right recognized by law.

5.3 Environmental Matters.

(a) Compliance with Environmental Laws. Unless notice to the contrary is given to the Lessor by the Lessee, prior to the Commencement Date, the Lessee hereby acknowledges and agrees that no Toxic or Hazardous Substances within the definition of CECRA exist on the Land. Further, the Lessee agrees as follows:

(i) Lessee will (A) comply with all Environmental Laws applicable to the operation or use of the Premises by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (B) use reasonable efforts to cause all Sublessees and other persons occupying the Premises to comply with all Environmental Laws; (C) immediately pay or cause to be paid all costs and expenses incurred in such compliance; and (D) keep or cause the Premises to be kept free and clear of any liens imposed thereon pursuant to any Environmental Laws.

(ii) Lessee will not generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, any Hazardous Substances on the Premises, or transport or permit the transportation of any Hazardous Substances to or from the Premises, in each case in any quantity or manner which violates any Environmental Law.

(iii) If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Premises or has reason to believe that Lessee or the Premises are in violation of any Environmental Law, at Lessor's written request, at any time and from time to time, Lessee will provide to Lessor an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm reasonably approved by Lessor, indicating the

presence or absence of Hazardous Substances and the potential cost of any removal or remedial action in connection with any Hazardous Substances on the Premises. Any such environmental site assessment report will be conducted at Lessee's sole cost and expense. If Lessee fails to deliver to Lessor any such environmental site assessment report within 90 days after being requested to do so by Lessor pursuant to this Section 5.3(a)(iii), Lessor may obtain the same, and Lessee hereby grants to Lessor and its agents access to the Premises and specifically grants to Lessor an irrevocable non-exclusive license to undertake such an assessment, and the cost of such assessment (together with interest thereon at the Default Rate) will be payable by Lessee on demand.

(iv) Lessor may, at its option, at any time and from time to time, obtain at its sole cost and expense an environmental site assessment report for the Premises, and Lessee hereby grants to Lessor and its agents access to the Premises and specifically grants to Lessor an irrevocable non-exclusive license to undertake such an assessment.

(v) At its sole expense, Lessee will conduct any investigation, study, sampling or testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Substances from the Premises which must be so removed or cleaned up in accordance with the requirements of any applicable Environmental Laws, to the reasonable satisfaction of a professional environmental consultant selected by Lessor, and in accordance with all such requirements and with orders and directives of all governmental authorities.

(b) Indemnity. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its Affiliates from and against any and all liabilities, obligations (including removal and remedial actions), losses, damages (including foreseeable and unforeseeable damages, but excluding punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting, in whole or in part, from: (i) the actual or alleged presence of Hazardous Substances on the Premises Released by Lessee or anyone acting by, through or under Lessee in any quantity or manner which violates Environmental Law, or the removal, handling, transportation, disposal or storage of such Hazardous Substances by Lessee or anyone acting by, through or under Lessee; or (ii) any Environmental Claim with respect to Lessee or the Premises resulting from a Release by Lessee or anyone acting by, through or under Lessee (collectively, the "Indemnified Matters"), regardless of when such Indemnified Matters arise, but excluding any Indemnified Matter with respect to Hazardous Substances first placed or Released on the Premises after the later of (A) the expiration or earlier termination of this Lease, or (B) the date neither Lessee nor any of its Affiliates holds title to or any other interest in or lien on the Premises.

(c) Survival. Lessee's remedial, indemnification and reimbursement obligations under this Section 5.3 will survive the expiration or earlier termination of this Lease.

6. UTILITIES AND REPAIRS.

6.1 Utilities. Lessee will pay before delinquency all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Premises under applicable Laws.

6.2 Repairs. Lessee will maintain, repair, replace and keep any Improvements or landscaping on the Land from time to time in reasonably good condition and repair in accordance with all applicable Laws, including necessary repairs to the interior, exterior and structure of any Buildings, mowing of grass and care of shrubs and general landscaping; pay all costs and expenses in connection therewith (subject to Section 14.2); and contract for the same in Lessee's own name. The foregoing will not be construed to limit Lessee's rights under Section 4.2.

7. TAXES.

7.1 Payment of Taxes. Subject to Section 7.4, Lessee will pay before delinquency, directly to the taxing authority, all Taxes that accrue during or are attributable to any part of the Term including Privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203. Lessee will deliver to Lessor reasonable evidence of payment of all Taxes within 60 days after Lessee pays all Taxes.

7.2 Proration at Beginning and End of Term. If the Term begins on other than the first day of a Tax Year or if the Term expires or otherwise terminates on other than the last day of a Tax Year, Taxes for the Tax Year in which the Term begins or ends, as the case may be, will be prorated between Lessor and Lessee, based on the most recent levy and most recent assessment. Such proration will be subsequently adjusted when the actual bills become available for Taxes for the Tax Year for which Taxes were prorated. Any Taxes payable in the first Lease Year prior to the Commencement Date shall be the sole responsibility of Lessor.

7.3 Special Assessments. Lessee will pay all special assessments (including those attributable to private extension agreement) and other like impositions levied or imposed for improvements commenced, installed and assessed during the Term; provided, however, that Lessee may pay in installments any such special assessments or like impositions that may be so paid according to applicable Law and, in such event, Lessee will only be required to pay those installments of any such assessments or impositions that become due and payable during the Term.

7.4 Tax Contests. Lessee will have the right to contest any Taxes or special assessments payable by Lessee, provided Lessee (a) provides Lessor with written notice of such contest, and (b) makes timely payment of the contested Taxes or special assessments if the Lessee loses the contest. In connection with any such contest, Lessee will have the right, at its sole expense, to institute and prosecute, in good faith and with due diligence and in Lessor's

name if necessary, any appropriate proceedings. Lessor may, at Lessee's expense, reasonably cooperate with and join in Lessee's efforts to contest any such Taxes or special assessments. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its Affiliates from and against any and all liabilities, obligations, losses, damages (including foreseeable and unforeseeable damages, but excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting from Lessor joining in any contest pursuant to this Section 7.4.

8. WAIVERS AND INDEMNITIES; LIABILITY AND CASUALTY INSURANCE.

8.1 Lessor's Waiver. Except to the extent caused by the willful or negligent act or omission by the Lessee or anyone for whom Lessee is legally responsible, neither Lessee nor any of its Affiliates will be liable or in any way responsible to Lessor for, and Lessor waives all claims against Lessee and its Affiliates for, any damage to or destruction of any Improvements, and Lessor waives its insurers' right of subrogation consistent with this waiver.

8.2 Lessee's Waiver. Except to the extent caused by the willful or negligent act or omission by Lessor or anyone for whom Lessor is legally responsible, neither Lessor nor any of its Affiliates will be liable or in any way responsible to Lessee for, and Lessee waives all claims against Lessor and its Affiliates for, any damage to or destruction of any Improvements, and Lessee waives its insurers' right of subrogation consistent with this waiver.

8.3 Lessor's Indemnity. Subject to Section 8.2 and except to the extent caused by the willful or negligent act or omission or breach of this Lease by Lessee or anyone for whom Lessee is legally responsible, Lessor will indemnify and hold Lessee harmless from and against any and all liability, loss, claims, demands, damages or expenses (including reasonable attorneys' fees) due to or arising out of any grossly negligent act by Lessor or anyone for whom Lessor is legally responsible.

8.4 Lessee's Indemnity. Subject to Section 8.1 and except to the extent caused by the willful or negligent act or omission or breach of this Lease by Lessor or anyone for whom Lessor is legally responsible, Lessee will indemnify and hold Lessor harmless from and against any and all liability, loss, claims, demands, damages or expenses (including reasonable attorneys' fees) due to or arising out of any accident or occurrence on or about the Premises during the Term (including, without limitation, accidents or occurrences resulting in injury, death, property damage or theft) or any negligent act or omission by Lessee or anyone for whom Lessee is legally responsible.

8.5 Acquisition of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Montana that are reasonably satisfactory to Lessor.

8.6 Types of Required Insurance. Lessee shall procure and maintain, or cause one or more of its Sublessees to provide and keep in force and name Lessee as an additional insured, the following during the Term:

(a) Liability Insurance. Comprehensive or commercial general liability insurance covering claims arising out of the ownership, operation, maintenance, condition or use of the Premises, for personal and bodily injury and death, and damage to others' property, with limits of not less than **\$X,000,000.00** for any one accident or occurrence. Lessor will be named as an additional insured in the policy providing such liability insurance, which will include cross liability and severability of interests clauses.

(b) Property Insurance. All risk fire and extended coverage insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements on a full replacement cost basis, excluding existing architectural and engineering fees, undamaged excavation, footings and foundations. The policy(ies) providing such property insurance will permit the release of Lessor from certain liability under Section 8.2. Some or all of such property coverage with respect to any Building or other Improvements subject to a Sublease may be maintained through self-insurance by the Sublessee, provided that in Lessee's reasonable judgment such Sublessee has sufficient financial capacity to self-insure such Building or Improvements.

(c) Workers' Compensation Insurance. Workers' compensation and employer's liability insurance (with limits satisfying applicable Laws) covering Lessee's employees, officers, agents and representatives.

8.7 Terms of Insurance. The policies required under Section 8.6 above, shall name Lessor as additional insured and Lessee shall provide promptly to Lessor certificates of insurance evidencing the policies obtained by Lessee hereunder as hereinafter described. Proof of insurance ("Proof") shall consist of either (a) an insurance binder or premium payment receipt, (b) a copy of the policy, or (c) an "ACORD 27 Evidence of Property Insurance" or "ACORD 25 Certificate of Liability Insurance," whichever is appropriate (or such other similar certificates), issued by Lessee's insurer with respect to each policy. If Lessee does not deliver the evidence required by the preceding sentence before taking possession of the Premises, then Lessee will deliver the same within 30 days after taking possession of the Premises. Thereafter, during the Term, within 30 days after the renewal date of each policy, the issuance of a new policy or on such other date as Lessor reasonably requires, Lessee will deliver a copy of the latest Proof to Lessor. Each policy of insurance will require the issuer of the insurance policy to give Lessor 30 days' advance written notice of the termination or modification of the policy. Further, all policies of insurance described in Section 8.6 above, shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Lessor may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled except after 30 days' prior written notice from insurance company to Lessor.

(c) Expressly provide that Lessor shall not be required to give notice of accidents or claims and that Lessor shall have no liability for premiums.

(d) Any deductibles must be approved to in writing by Lessor, provided that Lessor shall approve the same within 10 days of request using its commercially reasonable business judgment, which for purposes hereof, shall be measured by taking into consideration the opinions of three independent insurance companies having at least five years of experience insuring projects that are substantially similar to Lessee's project at the Premises.

9. DAMAGE OR DESTRUCTION.

(a) In the event of any substantial damage to or destruction of the Property or any improvements thereon from any causes whatever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless Lessor and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 4 above. Lessee's duty to repair any damage or destruction of the Property or any improvements thereon shall not be conditioned upon the availability of any insurance proceeds, from Lessee's insurance, to Lessee from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such repair and restoration. In the event Lessee is in default under the terms of this Lease at the time such damage or destruction occurs, Lessor may elect to terminate this Lease.

(b) In the event such damage or destruction occurs within the last ten (10) years of the term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, either Lessor or Lessee may elect by written notice to the other, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. If neither Lessor nor Lessee elects to terminate this Lease, Lessee shall repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by Lessor subject to the provisions of Section 9(a) above. In the event Lessor or Lessee elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction.

10. CONDEMNATION.

10.1 Notice. If either Lessor or Lessee learns that all or any portion of the Premises has been or is proposed to be subjected to a Taking, such party will immediately notify the other of such Taking.

10.2 Termination Option on Substantial Taking. If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or

before 60 days after the Taking Date. In such event this Lease will terminate effective as of the Taking Date, Lessee will surrender the Premises according to Section 13 on or before 30 days after the date of Lessee's notice of termination and all Base Rent and other Rent will be apportioned to the Taking Date, except that Lessee will also pay Lessor for the reasonable value Lessee's occupancy of the Premises, if any, from the Taking Date until the date Lessee so surrenders possession.

10.3 Continuation of Lease. If a Taking occurs during the Term that is not a Substantial Taking, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking with no reduction in Base Rent. If a Substantial Taking occurs but Lessee does not exercise its termination option according to Section 10.2, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date: (a) this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking; and (b) each payment of Base Rent due for any portion of the Term after the Taking Date will be reduced by subtracting from the amount that each such payment would otherwise have been required to be a percentage thereof equal to the percentage obtained by dividing the ground area of the portion of the Land that is the subject of such Taking by the ground area of all of the Land prior to such Taking.

10.4 Awards. If there is an award, compensation, damages or consideration paid or payable as a result of or in connection with any Taking or condemnation, the award will be allocated as follows: First, Lessee will be entitled to the current value of the Improvements, net of the value of the reversionary interest in favor of Lessor, as set forth in this Lease. Second, Lessee will be entitled to the net present value of the unexpired Term. Third, Lessor will be entitled to the value of the Land comprising the Premises (giving due effect to the Rent income in favor of Lessor hereunder, as if this Lease had not been terminated) and the value of Lessor's reversionary interest in the Improvements. Fourth, Lessee will be entitled to loss of fixtures that Lessee is entitled to remove pursuant to the terms hereof, to the extent it is a separate measure of damages in the condemnation award. Fifth, Lessor will be entitled to any other portion of the award not allocated pursuant to the foregoing provisions.

10.5 Settlement. Lessee and Lessor shall jointly negotiate with, litigate or enter into any settlement with any governmental or other condemning authority in connection with any Taking; provided, however, that the portion of the award attributable to the net of the value of the reversionary interest in favor of Lessor, shall be subject to Lessor's prior written approval. Lessor and Lessee will fully cooperate in connection with any such negotiation, litigation or settlement, including, without limitation, the execution by Lessor and Lessee of any and all required documents or instruments.

11. ASSIGNMENT, SUBLETTING AND FINANCING.

11.1 Assignment. Throughout the Term, Lessee may from time to time, with Lessor's prior written consent, assign in whole or in part, to a qualified lessee, its interest under this Lease, such consent not to be unreasonably withheld.

11.2 Subletting. No sublease shall be legal until a copy thereof has been filed with the Lessor and approved by the Director of the Montana Department of Natural Resources and Conservation.

11.3 Financing.

(a) Lessee's Right to Encumber. Throughout the Term, Lessee may from time to time and without Lessor's consent execute and deliver one or more Leasehold Mortgages securing any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Leasehold Mortgages to secure promissory notes evidencing construction, interim or permanent financing for the Premises or to secure Lessee's obligations under development, reimbursement or other agreements with governmental or quasi-governmental entities, utility companies or other third parties concerning matters such as sales or property tax abatement or rebate programs, public improvements or utilities. If any Leasehold Mortgagee or potential Leasehold Mortgagee requests that Lessor grant any express approvals with respect to its Leasehold Mortgage or execute and deliver any documents in connection therewith, Lessor will reasonably cooperate in granting such approvals and executing and delivering such documents, provided that in no event will Lessor be required to encumber or subordinate its reversionary interest in the Premises or to undertake any personal liability for the obligations of Lessee secured or to be secured by the Leasehold Mortgage.

(b) Qualified Mortgagees' Cure Rights. Prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Mortgagee notice of such Default by Lessee and afford it a period of 30 days after such notice is given in which to cure such Default by Lessee; provided, however, that (i) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured within such 30-day period, then so long as any Qualified Mortgagee commences a cure within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to diligently pursue the cure to completion; (ii) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured until the Qualified Mortgagee obtains possession of the Premises, then so long as any Qualified Mortgagee commences to obtain possession of the Premises within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to obtain possession of the Premises and then promptly commence and thereafter diligently pursue the cure to completion.

(c) Prohibition Against Mutual Rescission. No mutual termination, cancellation or rescission of this Lease by Lessor and Lessee will be effective unless and until the same is approved in writing by each Qualified Mortgagee. All rights and remedies of the Qualified Mortgagee hereunder will be cumulative with, in addition to and non-exclusive of one another.

11.4 Assignment by Lessor. If Lessor sells or otherwise transfers the Land, or if Lessor assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be

deemed to have assumed Lessor's obligations hereunder which arise on or after the date of sale or transfer, and Lessor shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect.

12. DISPUTE RESOLUTION.

12.1 Issues Subject to Administrative Hearing. Any controversy which shall arise between Lessor and Lessee regarding the provisions hereof, including any amount of insurance to be maintained by Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Premises, shall be resolved by an administrative contested case hearing before the Lessor under the Montana Administrative Procedures Act.

12.2 Advisor to Hearing Examiner. In the case of issues relating to the determination of values of real property, the Lessor's hearing examiner shall employ as an advisor, a real estate appraiser who has a professional designation as an "MAI" or "SREA," or a member of a similarly recognized professional organization with at least five (5) years experience with the type of real estate at issue, in the area in which the Property is located.

12.3 Administrative Hearing Procedure. All administrative hearings hereunder shall be conducted in the offices of the Lessor in Helena, Montana. The findings of fact, conclusions of law, and proposed decision of the hearing examiner shall be rendered within sixty (60) days of the completion of the hearing and submission of any briefs. Either party may file exceptions to the hearing examiner's findings, conclusions, and proposed decision with the Lessor's Director. The Lessee may, as permitted by the Lessor's administrative rules, petition for judicial review of the final administrative decision of the Lessor. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness.

13. LEASE EXPIRATION.

13.1 Condition at End of Lease. Upon vacating the Premises on the Expiration Date, Lessee shall leave the Premises in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to Lessor.

13.2 Lessee Shall Yield Premises. The Lessee shall upon the termination of this Lease peaceably yield up and surrender the possession of the land to the Lessor or its agents or to subsequent lessees or grantees for any cause.

13.3 Holding Over. Holding Over. Should the Lessee remain in possession of the Premises after the Expiration Date or termination without a written agreement providing for the same, Lessee will, at Lessor's option be deemed to be a tenant from month to month, at a monthly Base Rent, payable in advance, equal to 150% of monthly Base Rent payable during the last full "Lease Year" prior to the Expiration Date or termination of this Lease, and Lessee will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy.

14. LIENS AND ESTOPPEL CERTIFICATES.

14.1 Liens. Lessee will not allow to be recorded, filed, claimed or asserted against the Premises any mechanic's lien for supplies, machinery, tools, equipment, labor or material contracted for, by, through or under such party and furnished or used in connection with any construction, development, alteration, improvement, addition to, demolition of or repair to or maintenance of any Building or other Improvement, or any tax lien, judgment lien or other involuntary lien of any nature arising by, through or under such party, and if the Lessee causes or permits any such lien to be so recorded, filed, claimed or asserted, the Lessee will cause the same to be released or discharged within 90 days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may cause any such claimed lien to be released of record by bonding or payment or any other means available. All sums paid and costs and expenses, including reasonable attorneys' fees, incurred by the Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, will be due and owing from the Lessee to the Lessor upon demand therefore. The provisions of this Section 14.1 are subject in all respects to those set forth in Section 14.2 below.

14.2 Lien Contests. If Lessee has a good faith dispute as to any lien for which Lessee is responsible according to Section 14.1 Lessee may contest the same by appropriate proceedings so long as Lessee bonds over the lien or deposits with Lessor security in an amount acceptable to Lessor (but in no event more than the amount required by applicable Laws) which may be used by Lessor to release such lien and pay interest and costs if Lessee's contest is abandoned or is unsuccessful. Upon final determination of any permitted contest, Lessee will immediately pay any judgment rendered and cause the lien to be released. So long as Lessee is acting in conformity with this Section 14.2, Lessor will have no right to exercise its remedies under Section 14.1.

14.3 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time (but on not less than 10 days' prior request by the other party), each party will execute, acknowledge and deliver to the other a certificate indicating any or all of the following: (a) the date on which the Term commenced and the date on which it is then scheduled to expire; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the date, if any, through which Base Rent had been paid; (d) that no Default by Lessor or Default by Lessee exists which has not been cured, except as to defaults stated in such certificate; (e) that the responding party has no existing defenses or set-offs to enforcement of this Lease, except as specifically stated in such certificate; and (f) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by the requesting party and, if Lessor is the requesting party, by any prospective purchaser of Lessor's reversionary interest in the Premises, or if Lessee is the requesting party, by any or present or prospective Leasehold Mortgagee, Sublessee or assignee of Lessee's interest under this Lease.

15. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

15.1 Defaults by Lessee. Each of the following events will constitute a "Default by Lessee" under this Lease:

(a) Failure to Pay Rent. Lessee fails to pay any Base Rent or any other Rent payable by Lessee under the terms of this Lease when due, and such failure continues for 10 days after written notice from Lessor to Lessee of such failure.

(b) Failure to Perform Other Obligations. Lessee breaches or fails to comply with any provision of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of 30 days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessee does not commence to cure such breach or noncompliance within such 30-day period and thereafter pursue such cure in good faith to completion. Any non-payment or failure to pay debts and financial obligations can be grounds to cancel this lease. Financial obligations include rental payments due to the Lessor, taxes, insurance, environmental bonding, utilities and others.

(c) Failure to Perform Other Obligations. Lessee breaches or fails to comply with any provision of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of 30 days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessee does not commence to cure such breach or noncompliance within such 30-day period and thereafter pursue such cure in good faith to completion.

(d) Execution and Attachment Against Lessee. Lessee's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Lessee, or is subject to any attachment by any creditor or claimant against Lessee and such attachment is not discharged or disposed of within 90 days after levy.

(e) Cancellation. The Lessor shall have the power and authority in its discretion to cancel a lease for any of the following causes: for fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other reasonable cause which in the judgment of the Lessor makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interest of the state. Such cancellation shall not entitle the Lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the State. If any part of the lands or premises under this license are used or allowed or permitted to be used for any purpose contrary to the laws of this State, and of the United States, such unlawful use shall in the discretion of the Lessor constitute sufficient reason for the cancellation of the lease. Lease cancellation is subject to appeal as provided in Section 77-6-211, MCA.

15.2 Lessor's Remedies. Time is of the essence. If any Default by Lessee occurs, Lessor will have the right, at Lessor's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessor at law or in equity.

(a) Cure by Lessor. Where there is a Default by Lessee, Lessor may, at Lessor's option but without obligation to do so, and without releasing Lessee from any obligations under this Lease, make any payment or take any action as Lessor deems necessary or desirable to cure any Default by Lessee in such manner and to such extent as Lessor in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessor notifies Lessee in writing of Lessor's intention to do so and affords Lessee at least 10 days in which to make such payment or take such action. Lessee will pay Lessor, upon written demand, all advances, costs and expenses of Lessor in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessor.

(b) Termination of Lease. Where there is a Default by Lessee, Lessor may terminate this Lease, effective at such time as may be specified by written notice to Lessee, and demand (and, if such demand is refused, recover) possession of the Premises from Lessee. In such event, Lessor will be entitled to recover from Lessee such damages as are allowable by applicable Laws.

(c) Repossession and Reletting. Where there is a Default by Lessee, Lessor may reenter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Lessee and any party claiming by, through or under Lessee, and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Lessor will be construed as an election by Lessor to terminate this Lease unless a notice of such intention is given to Lessee. No notice from Lessor or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Lessee such notice, in which event the Lease will terminate as specified in such notice. After recovering possession of the Premises, Lessor will use reasonable efforts to relet the Premises on commercially reasonable terms and conditions. Lessor may make such repairs, alterations or improvements as Lessor considers appropriate to accomplish such reletting, and Lessee will reimburse Lessor upon demand for all reasonable costs and expenses, including reasonable attorneys' fees, which Lessor may incur in connection with such reletting. Lessor may collect and receive the rents for such reletting but Lessor will in no way be responsible or liable for any inability to relet the Premises or to collect any rent due upon such reletting. Regardless of Lessor's recovery of possession of the Premises, so long as this Lease is not terminated Lessee will continue to pay on the dates specified in this Lease, the Base Rent and other Rent which would be payable if such repossession had not occurred, less a credit for the net amounts, if any, actually received by Lessor through any reletting of the Premises.

(d) Receiver. To properly effectuate the recovery of damages and other sums owing from Lessee to Lessor hereunder following a Default by Lessee, Lessor, in

conjunction with any dispossession proceeding commenced pursuant to this Lease may seek an appointment of a receiver by a court of competent jurisdiction to the extent provided for in and compliance with the requirements of Title 25, Chapter 14, Part 2 of the Montana Code Annotated and Rule 66 of the Montana Rules of Civil Procedure, as they may be amended. In no event will Lessor be obligated to post a bond in connection with the appointment of a receiver.

(e) Bankruptcy Relief. Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of the Lessee's future performance under 11 USC Section 365 or other applicable laws, or any other legal rights, in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding.

16. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

16.1 Defaults by Lessor. The following event will constitute a "Default by Lessor" under this Lease: Lessor breaches or fails to comply with any provision of this Lease applicable to Lessor, and such breach or noncompliance continues for a period of 30 days after notice thereof from Lessee to Lessor; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessor does not commence to cure such breach or noncompliance within such 30-day period and does not thereafter pursue such cure in good faith to completion; provided, however, that any such cure period will terminate at such time, if ever, as the subject breach or failure to comply results in an actual or constructive eviction of Lessee.

16.2 Lessee's Remedies. Time is of the essence. If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessee at law or in equity.

(a) Cure by Lessee. Lessee may, at Lessee's option but without obligation to do so, and without releasing Lessor from any obligations under this Lease, make any payment or take any action as Lessee deems necessary or desirable to cure any Default by Lessor in such manner and to such extent as Lessee in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessee notifies Lessor of Lessee's intention to do so and affords Lessor at least 10 days in which to make such payment or take such action. Lessor will pay Lessee, upon demand, all advances, costs and expenses of Lessee in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessee.

(b) Damages. Regardless of whether this Lease is terminated, Lessee may commence and pursue any lawful action in a contested case proceeding before the Lessor under the Montana Administrative Procedures Act to recover such damages as may be allowable as a result of or in connection with the Default by Lessor.

17. MISCELLANEOUS.

17.1 Lease Reclamation and Marketing Fee. Lessee agrees to pay to Lessor the Fee of \$XX,000.00 in accordance with and if required by the provisions of this Lease as security for the full, faithful and timely performance of every provision of this Lease to be performed by Lessee. The Fee shall become immediately nonrefundable to Lessee. The Lessor may use the Fee for the removal and reclamation of the Lease Improvements upon the termination of the Lease, and also use the Fee to manage the Premises as appropriate for future uses and leasing, which may include marketing. The Lessor anticipates initiating the use of the Fee within two years of the lease termination.

17.2 Notices. All notices required or permitted under this Lease must be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) 10 business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mails, certified – return receipt requested, with postage prepaid. All such notices must be transmitted by one of the methods described above to the party to receive the notice at, in the case of notices to Lessor, Lessor's Address, in the case of notices to Lessee, Lessee's Address, and in the case of notices to a Qualified Mortgagee, the address set forth as its notice address in its most recent notice to Lessor, or, in any case, at such other address(es) as Lessor, Lessee or a Qualified Mortgagee may notify the others of according to this Section 17.2.

17.3 Binding Effect. Each of the provisions of this Lease will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors and assigns.

17.4 Modifications. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party, or agents of either party, which are not contained in this Lease shall be valid or binding and this Lease may not be enlarged, modified or altered except as provided in this Lease or unless signed by the parties. If executed properly under this section, modifications of this Lease do not need independent consideration to be legally enforceable.

17.5 Enforcement Expenses. Regardless of any statutory rights, each party agrees to bear their own costs, charges and expenses, including the fees and out-of-pocket expenses of attorneys, agents and others retained, incurred in successfully enforcing the other party's obligations under this Lease.

17.6 No Waiver. No waiver of any provision of this Lease will be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver will affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

17.7 Memorandum Notice of Lease. Upon the request of either party, Lessor and Lessee will, in form satisfactory to Lessor and Lessee, cause to be prepared and will execute, acknowledge and deliver a short memorandum notice of this Lease in recordable form which either party may record in the real property records of the county in which the Premises are located to give constructive notice of the existence of this Lease. The terms and conditions of this Lease are controlling over any memorandum notice later prepared by the Lessor and Lessee.

17.8 Captions. The captions of sections are for convenience of reference only and will not be deemed to limit, construe, affect or alter the meaning of such sections.

17.9 Severability. If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease will continue in full force and effect, except that the void or unenforceable provision will be deemed deleted and replaced with a provision as similar in terms to such void or unenforceable provision as may be possible and be valid and enforceable.

17.10 Waiver of Jury Trial. Lessor and Lessee waive trial by jury in any action, proceeding or counterclaim brought by Lessor or Lessee against the other with respect to any matter arising out of or in connection with this Lease, Lessee's use and occupancy of the Premises, or the relationship of Lessor and Lessee.

17.11 Authority to Bind. The individuals signing this Lease on behalf of Lessor and Lessee represent and warrant that they are empowered and duly authorized to bind Lessor or Lessee, as the case may be, to this Lease according to its terms.

17.12 Only Lessor/Lessee Relationship. Lessor and Lessee agree that neither any provision of this Lease nor any act of the parties will be deemed to create any relationship between Lessor and Lessee other than the relationship of Lessor and Lessee.

17.13 Reservation of Oil, Gas, and Minerals. Lessor expressly excepts and reserves from this Lease all rights to all oil, gas and other minerals in, on or under the Land and that might be produced or mined from the Land; provided, however, that no drilling, mining or other surface disturbance will be undertaken on the surface of this lease, nor shall the Lessor interfere with the Lessee's right to subjacent support, during the Term of this Lease.

17.14 Reasonableness. At any time during this Lease, if Lessee is to use reasonable judgment, it shall be deemed to mean ordinary business judgment.

17.15 Governing Law; Venue and Jurisdiction. This Lease will be governed by and construed according to the laws of the State of Montana. Venue and jurisdiction for any dispute arising under this Lease shall be before the Lessor as a contested case proceeding under the Montana Administrative Procedures Act in Lewis and Clark County.

17.16 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

17.17 Broker. Lessor and Lessee represent and warrant that no broker or agent negotiated, or was instrumental in negotiating or consummating this Lease (the "Brokers").

Neither party knows of any other real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Lease. Lessor and Lessee will pay all fees, commissions or other compensation payable to the Brokers pursuant to a separate agreement entered into by Lessor and Lessee. Lessee and Lessor will indemnify and hold each other harmless from all damages paid or incurred by the other resulting from any claims asserted against either party by brokers or agents claiming through the other party.

17.18 Lessor May Inspect Premises. Representatives of the Lessor shall, upon 24 hours notice to the Lessee, have the right to enter and upon the premises and all buildings and structures thereon and all parts thereof for the purpose of inspecting and examining the same.

Having read and intending to be bound by the terms and provisions of this Lease, Lessor and Lessee have signed it as of the date first set forth above.

**LESSEE, Business or Agency, a Limited
Liability company:**

By: _____

Name, Title

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____ by _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

LESSOR, STATE OF MONTANA, DNRC:

By: _____

Mary Sexton, Director

STATE OF MONTANA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____ by _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE LAND

EXHIBIT B

RENTAL SCHEDULE

The Lessee agrees to pay as follows, subject to the conditions and procedures as further described herein:

EXHIBIT C

UTILITY AND ROAD INFRASTRUCTURE

EXHIBIT D

GROUND LESSOR NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS GROUND LESSOR NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made this ____ day of _____, 20____, by and among _____, _____ ("Lessor"), _____, _____ ("Ground Lessor"), and _____, a _____ ("Lessee").

RECITALS

A. Ground Lessor is the owner of certain real property (the "Real Property") that Ground Lessor has leased to Lessor pursuant to the terms of that certain Ground Lease between Ground Lessor and Lessor dated _____, 20____ (the "Ground Lease"). The Real Property is more particularly described in the Ground Lease.

B. Lessor and Lessee have entered into a Lease (the "Lease"), dated _____, 20____, demising a portion of the Real Property to Lessee as further described in the Lease (the "Leased Premises").

C. Ground Lessor, Lessor and Lessee are executing this Agreement to provide Lessee and Ground Lessor with certain rights upon expiration and/or termination of the Ground Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee, Lessor and Ground Lessor, intending to be legally bound hereby, covenant and agree as follows:

1. Consent. Ground Lessor hereby consents to and approves of the Lease and the leasing of the Leased Premises to Lessee. In addition, Ground Lessor consents to and approves of the construction of the improvements described in the Lease and all alterations and modifications required in connection therewith so long as the same comply with the Ground Lease.

2. Status of Ground Lease. Ground Lessor represents and warrants to Lessee that, to the best of Ground Lessor's knowledge and belief, as of the date of this Agreement: (a) Ground Lessor is the "Lessor" under the Ground Lease; (b) Ground Lessor is the sole holder of fee title to the Leased Premises; and (c) Ground Lessor has the full right and authority to enter into this Agreement. Ground Lessor further represents and warrants to Lessee that, to the best of Ground Lessor's knowledge and belief: (i) the Ground Lease is unmodified and in full force and

effect and represents a valid lease of the Real Property; and (ii) neither Ground Lessor nor Lessor are in default under any terms or conditions of the Ground Lease.

3. Non-Disturbance. Provided that Lessee is not in default under the Lease or this Agreement beyond any applicable notice and cure period, and no circumstances exist which with the giving of notice or passage of time would be a default of Lessee under the Lease, Ground Lessor hereby agrees that Ground Lessor: (a) shall not disturb or deprive Lessee in or of its use, quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Leased Premises, or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of Lessee under the Lease (including any right of renewal of extension thereof); (b) shall not terminate or affect the Lease; (c) shall recognize Lessee's rights, benefits and privileges under the Lease; and (d) shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term of the Lease with the same force and effect as if Ground Lessor were the Lessor under the Lease. Ground Lessor covenants that any sale by it of the Leased Premises shall be made subject to the Lease and the rights of Lessee thereunder.

4. Ground Lessor's Rights. By virtue of the attornment of Lessee set forth herein, Ground Lessor shall be entitled to exercise the claims, rights, powers, privileges, options and remedies of Lessor under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Lessee under the Lease as though Ground Lessor were named therein as Lessor. Ground Lessor shall not, by virtue of the operation of this Agreement, be or become:

(a) Liable for any act or omission of Lessor arising prior to the date Ground Lessee takes possession of Lessee's interest in the Lease except to the extent such act or omission is of a continuing nature, such as, for example, a repair obligation;

(b) Liable for any offsets or deficiencies which Lessee might be entitled to assert against Lessor arising prior to the date Ground Lessor takes possession of Lessor's interest in the Lease, except to the extent that Ground Lessor has received the benefit of the act of Lessee giving rise to the right of deduction, such as, for example, relief of an obligation that would otherwise have been paid by Ground Lessor as Lessor under the Lease;

(c) Bound by any payment of rent or additional rent made by Lessee to Lessor for more than one month in advance, which payment was not required under the terms of the Lease; or

(d) Liable for any application, payment, repayment or reimbursement of all or any portion of the Security Deposit (as defined in the Lease) to or on behalf of Lessee unless or until Ground Lessor actually receives all or a portion of the Security Deposit from Lessor or otherwise obtains possession or control thereof, and then only to the extent of the amounts of the Security Deposit actually received or obtained by Ground Lessor.

5. Attornment. In the event of the termination or expiration of the term of the Ground Lease for any reason whatsoever, and if Lessee is not in default under the terms and conditions of the Lease beyond any applicable notice and cure period, then, and in any such event, Lessee shall not be made a party in the action or proceeding to terminate the Ground Lease. Further, notwithstanding any contrary provisions in the Ground Lease, provided that Lessee is not in default under the Lease or this Agreement beyond any applicable notice and cure period, and no circumstances exist which with the giving of notice or the passage of time would be a default of Lessee under the Lease, Lessee shall not be evicted or moved or its possession or right to possession under the terms of the Lease be disturbed or in any way interfered with. Subject to the provisions of this Agreement, Lessee will attorn to Ground Lessor or any other party which obtains title to the Leased Premises pursuant to any remedy provided for by the Ground Lease or otherwise. Such attornment shall be effective and self-operative without the execution of any other instruments on the part of any party, provided that Ground Lessor notifies Lessee thereof, and in all events, the Lease shall continue in full force and effect, subject to the terms of this Agreement, as a direct Lease between Ground Lessor (or such party) and Lessee under all of the exact and verbatim terms and provisions of the Lease (including any rights of Lessee to renew or extend the term thereof), without the necessity for executing any new lease. In the event of such attornment, Ground Lessor shall be deemed to have assumed and shall assume, subject to the provisions of Section 4 herein, the performance of all of the affirmative covenants of Lessor occurring under the Lease from and after the time Ground Lessor becomes Lessor and until such time as such obligations are assumed by a bona fide purchaser, if any.

6. Acknowledgement of Lessee. Lessee acknowledges and agrees that this Agreement satisfies any condition or requirement for a non-disturbance agreement from Ground Lessor pursuant to the terms of the Lease. Except as otherwise expressly set forth in this Agreement, Lessee agrees that in the event of a conflict between the terms and provisions of the Lease and the terms and provisions of the Ground Lease, the terms and provisions of the Ground Lease will control.

7. Notice of Payment. After notice is given to Lessee by Ground Lessor pursuant hereto that the Ground Lease has been terminated or has expired and that the rentals under the Lease should be paid to Ground Lessor, Lessee shall pay to Ground Lessor, or in accordance with the directions of Ground Lessor, all rentals and other monies due and to become due to the Lessor under the Lease, and Lessor hereby expressly authorizes Lessee to make such payments to Ground Lessor and hereby releases and discharges Lessee of any from any liability to Lessor on account of any such payments.

8. Modifications. On and after the date of the Lease and throughout the term of the Lease, Ground Lessor and Lessor shall not enter into any cancellation, amendment or termination of the Ground Lease, which would materially and adversely affect Lessee's leasehold interest or Lessee's business operation in the Leased Premises, without Lessee's prior written consent, which consent shall not be arbitrarily withheld or delayed.

9. Terms of Lease.

10. Liability. Ground Lessor and Lessee agree that neither of them has any liability to the other by reason of any default by Lessor under the Ground Lease, and that their

only liability to each other with respect to Lessee's use of the Leased Premises is as expressly provided herein. Furthermore, Lessee has no liability to Ground Lessor under the Lease until the expiration or earlier termination of the Ground Lease and Ground Lessor's assumption of the Lease, pursuant to Section 5 of this Agreement. Nothing contained herein or in the Lease releases Lessor from its obligations under the Ground Lease.

11. Amendments. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against which the same is brought to be asserted. This Agreement: (a) contains the entire understanding of Ground Lessor, Lessor and Lessee regarding the matters dealt with herein (any prior written or oral agreements between them as to such matters being superseded hereby); and (b) can be modified or waived in whole or in part only by a written instrument signed on behalf of the party against whom enforcement of the modification or waiver is sought.

12. Litigation. Provided that Lessee is not in default under the Lease beyond any applicable notice and cure period, Ground Lessor shall not institute any litigation naming Lessee as a defendant or otherwise terminating Lessee's leasehold interest in the Leased Premises unless Lessee is required to be named in such litigation by law, and only so long as Lessee's failure to defend against any such action shall not result in a waiver of its rights to continued possession under the Lease as set forth in this Agreement. The term Ground Lessor as used herein shall include any successor-in-interest to Ground Lessor.

13. Miscellaneous. This Agreement shall inure to the benefit of and shall be binding upon Lessee, Lessor and Ground Lessor, and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein. This Agreement shall be governed by and construed according to the laws of the State of Montana.

14. Notices. Any notice, demand or request required hereunder shall be given in writing at the addresses set forth below by personal delivery, nationally-recognized overnight courier service, or certified, first class mail, return receipt requested. Notice shall be deemed delivered (a) upon personal delivery, (b) the next business day after deposit with a nationally recognized overnight courier service, or (c) three days after deposit with certified, first class mail, postage prepaid. Rejection or other refusal to accept, or inability to deliver because of a changed address of which no notice has been given, will constitute receipt of the notice or other communication. The addresses may be changed by notice to the other party given in the same manner as provided above.

If to Ground Lessor:

With a copy to:

If to Lessor:

If to Lessee:

15. Attorneys' Fees. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, each party shall bear its own costs and attorney's fees.

16. Other Documentation. The parties hereto covenant and agree that they shall execute such other and further documents as are or may become necessary to carry out the objectives of this Agreement.

LESSOR, STATE OF MONTANA, DNRC:

By: _____
Mary Sexton, Director

STATE OF MONTANA)
) ss:
COUNTY OF LEWIS & CLARK)

 The foregoing instrument was acknowledged before me this ____ day of
_____, 20____, by _____ as _____ of
_____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT X

TITLE OF EXHIBIT GOES HERE IF NEEDED